IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR No.6626 of 2007

DATE OF DECISION: 20.12.2007

Ramphool ...Petitioner

VERSUS

Lakhmi Chand …Respondent

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.Navneet Singh, Advocate for the petitioner

Permod Kohli, J. (Oral)

This Revision is directed against the order dated 15.11.2007 passed by Civil Judge (Jr.Division), Gurgaon, rejecting the application of the petitioner (plaintiff in the suit) for recalling the witnesses Bhim Singh and Lakhmi Chand for further cross-examination. After the statements of these two witnesses of the defendants were recorded and the defendant's evidence was closed, the case was posted for rebuttal evidence. At this stage, the applicant/plaintiff filed an application under Order 18 Rule 17 CPC for recalling these witnesses for further re-examination/cross-examination. The only ground urged in the application is mentioned

in paragraph 2 which is reproduced here-in-below:-

> "2.That in the above noted case two defendant's witness no.1 Bhim Singh Namberdar of Village Nimoth & No.2 Lakhmi Chand defendant are already examined but due to the omission of the plaintiff's counsel some vital questions to be asked to the defence witnesses. The plaintiff's counsel omission is a bona fide one not to harass the defendant's witnesses which will help to the proper and just adjudication of the case."

On consideration of the aforesaid averments made in the application, the trial court rejected the application vide the impugned order.

I have heard learned counsel appearing for the petitioner/plaintiff at length. Learned counsel has relied upon a judgment passed in the case of **M/s National Agro-Chemical Industries Ltd. vs. National Research Development Corporation, 2006(2) R.C.R. (Civil) 98** wherein a Division Bench of Delhi High Court allowed the recalling of the witnesses where the cross-examination was not completed earlier. Learned counsel has relied on another judgment passed by this Court in the case of **Paramjit Kaur and others vs. Gurjant Singh and others, 2006(4) RCR (Civil) 646** wherein recalling of the witness was allowed who was not cross-examined. Learned counsel has further relied upon a judgment of the Madrass High Court reported in 2007 (1) RCR (Civil) wherein the Court has observed that the court can recall

a witness for cross-examination, if evidence by both the sides has been closed.

As far as the power of the Court to recall the witnesses is concerned, it cannot be disputed. However, the question arises that under what circumstances the court should recall the witnesses. The only ground made in the application is that the counsel for the plaintiff omitted some vital questions to be asked from the witnesses. This clearly indicates that plaintiff, after the cross-examination, must have realised that there is some lacuna and he wanted to fill up the same by recalling the witnesses. Not only that there is nothing in the application which can suggest that what are the vital questions which are required to be asked from the witnesses for the purposes of adjudication of this case. In the absence of there being anything in the application, the trial court rightly rejected the application. The trial court has exercised judicial discretion and the same cannot be interfered by this Court in exercise of revisional jurisdiction under Article 227 of the Constitution of India. I do not find any merit in this petition which is accordingly dismissed.

(PERMOD KOHLI)
JUDGE

20.12.2007
MFK

Note:Whether to be referred to Reporter or not:YES/NO